



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNDC, MNSD, MNR, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security and pet deposits in partial satisfaction of the claim. The tenant applied for the return of her security deposit, the filing fee and compensation for stress, hardship and inconvenience.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

The tenant moved out of the rental unit on October 01, 2013 and the landlord has possession of the rental unit. Therefore the landlord's application for an order of possession is moot and accordingly dismissed.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent and the filing fee? Is the tenant entitled to a monetary order for compensation and the filing fee?

Background and Evidence

The tenancy started on June 01, 2012. The monthly rent was \$750.00 payable on the first of each month. The tenant paid a security deposit of \$362.50 plus a pet deposit of \$50.00. A copy of the tenancy agreement was filed into evidence. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

The landlord testified that he offered to increase the living space in the rental unit by approximately 100 square feet, by removing the staircase that connected the rental unit to the upstairs unit. The tenant agreed and the work started on June 20, 2013.

The plan was to finish the work by June 26, 2013 at which time the tenant's mother would be visiting.

The staircase was removed leaving holes in the ceiling which were covered shortly after. The landlord stated that he provided a piece of carpet for the unfinished area of the floor that the staircase occupied and filed a photograph of the area. The tenant denied having received this carpet.

The tenant also stated that a wall between the washroom and the kitchen was removed and not replaced for two months. The landlord clarified that the shower stall and toilet are located in a room that has a long passage and the wall at the end of the passage was removed. The wall was replaced but the door was not. The landlord stated that the tenant had options to hang a divider.

On August 28, 2013, the tenant reported a faulty shower. The landlord attended to it, the next day but was unable to get a part to fix it. The landlord had plans for that long weekend and upon his return, he repaired the shower head. The landlord stated that the tenant had access to water for the shower, but just needed to use the taps that are located on the other side of the shower which can be reached from within the shower stall. The tenant stated that they could not be reached from within the shower stall but agreed that she had access to showers until the repairs were done. The tenant is claiming \$200.00 for compensation.

The tenant is also claiming \$387.00 for the inconvenience caused by the renovation work that was not done in a timely manner.

The work stopped for the period of June 26 to July 09 for the duration of the tenant's mother's visit. The landlord agreed that he did not carry out the work in a timely manner even after the work resumed.

The tenant failed to pay rent for September and on September 04, 2013; the landlord served the tenant with a notice to end tenancy for nonpayment of rent. The tenant did not dispute the notice and did not pay rent.

On September 12, 2013, the landlord received a letter from a bylaw officer that ordered the landlord to restore the staircase and use the house as a single family dwelling. On September 16, 2013, the landlord served the tenant with a 30 day notice to end tenancy effective October 31, 2013. On October 01, 2013 the tenant wrote a note to the landlord informing him that she was moving out that day. The landlord is claiming rent for September and October 2013 in the amount of \$1,500.00.

Analysis

Landlord's application:

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. In the absence of evidence to the contrary, I find that the tenant did not pay rent for September 2013. Therefore, I find that the landlord is entitled to rent for September in the amount of \$750.00.

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I find that subsequent to the order from the local by law officer, on September 16, 2013, the landlord gave the tenant notice to end the tenancy effective October 31, 2013. The tenant moved out on October 01, 2013 without notice to the landlord. Therefore, I find that the tenant must pay rent for October 2013. Since the landlord has proven his case, he is entitled to the recovery of the filing fee. Overall the landlord has proven his entitlement to rent for September and October plus the recovery of the filing fee for a total of \$1,550.00.

Tenant's application:

Based on the sworn testimony of both parties, I find that the landlord acted on the tenant's complaint of a faulty shower immediately. He was unable to repair it immediately, but the tenant had an alternative option until it got repaired. Therefore the tenant's claim for \$200.00 is dismissed.

The tenant has made a claim for \$1,160.00 for stress and hardship for the period that the repairs were ongoing. In regard to the tenant's monetary claim, I have reviewed the submissions of both parties.

The tenant stated that the ongoing repairs, interactions with the landlord and the anxiety from not knowing whether the tenancy would end or not caused a great deal of stress between her and her partner, which took a toll on their relationship. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for disruption, harassment and stress. I therefore dismiss this portion of the tenant's application and claim in its entirety.

The tenant has also claimed \$387.00 for inconvenience. Based on the testimony of both parties, I find that the landlord did not complete the renovations in a timely manner which resulted in inconvenience to the tenant. Therefore I find that the tenant is entitled to her claim for \$387.00. Since the tenant has proven a portion of her claim, I award her the recovery of the filing fee \$50.00. The landlord must return the security and pet deposits to the tenant in the amount of \$412.50.

Overall, the landlord has established a claim of \$1,550.00 and the tenant has established a claim of \$849.50 which includes the return of the security and pet deposits. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$700.50 which consists of the difference between the established entitlements of both parties.

I order that the landlord retain the security and pet deposits of \$412.50 and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount due of \$700.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$700.50**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 24, 2013

Residential Tenancy Branch

